

McCARTHY, JOHNSON & MILLER
LAW CORPORATION
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 08

JCS

1170

BOARD OF TRUSTEES OF THE PLUMBERS)
AND STEAMFITTERS MANAGED HEALTH CARE)
TRUST FUND; BOARD OF TRUSTEES OF THE)
U.A. LOCAL NO. 343 PENSION TRUST)
FUND; BOARD OF TRUSTEES OF THE U.A.)
LOCAL NOS. 343 AND 355 DEFINED)
CONTRIBUTION PLAN; BOARD OF TRUSTEES)
OF THE U.A. LOCAL NO. 343 JOURNEYMAN)
AND APPRENTICE TRAINING TRUST FUND;)
AND BOARD OF TRUSTEES OF THE U.A.)
LOCAL NO. 343 LABOR-MANAGEMENT)
COOPERATION COMMITTEE TRUST FUND,)

No.

**COMPLAINT FOR AUDIT ENTRY
AND FOR MONEY**

Plaintiffs,

v.

RAMCON COMPANY, INC., A CALIFORNIA
CORPORATION

Defendant.

NATURE OF THE ACTION

1. This action arises under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") [29 U.S.C. § 1001, et seq.], and more particularly under Sections 1132 and 1145. This action also arises under Section 301 of the Labor Management Relations Act ("LMRA") [29 U.S.C. § 185]. Plaintiffs allege that

1 defendant has unlawfully refused to allow an audit and failed to
2 make required payments to joint labor-management trust funds and
3 employee benefit plans in violation of a collective bargaining
4 agreement and certain trust agreements.

5 **JURISDICTION AND VENUE**

6 2. Jurisdiction of this Court is invoked pursuant to 29
7 U.S.C. § 1132(e)(1) and 28 U.S.C. §§ 1331 and 1337. Pursuant to 29
8 U.S.C. § 1132(f), this Court has jurisdiction without respect to the
9 amount in controversy or the citizenship of the parties. This is an
10 action authorized and instituted pursuant to Sections 502 and 515 of
11 ERISA [29 U.S.C. §§ 1132 and 1145] and Section 301 of the LMRA [29
12 U.S.C. § 185].

13 3. Venue is proper in this District pursuant to Section
14 502(e)(2) of ERISA [29 U.S.C. § 1132(e)(2)] and Section 301(a) of
15 the LMRA [29 U.S.C. § 185(a)].

16 **PARTIES**

17 4. At all times material herein, each of the above-named
18 plaintiffs, with the exception of the Board of Trustees of the
19 U.A. Local No. 343 Labor-Management Cooperation Committee Trust
20 Fund, (hereinafter referred to as "Trust Funds") was and is the
21 Plan Administrator of employee benefit plans within the meaning of
22 Section 3(3) of the Employee Retirement Income Security Act as
23 amended (hereinafter "ERISA"), 29 U.S.C. Section 1002(3) and was
24 and is, a fiduciary within the meaning of Section 3(2)(A)(iii) of
25 ERISA, 29 U.S.C. § 1002(21)(A)(iii), and the named fiduciary
26 within the meaning of Section 402(a)(1) of ERISA, 29 U.S.C.
27 § 1004(a)(1). Plaintiff, Board of Trustees of the U.A. Local No.
28 343 Labor-Management Cooperation Committee Trust Fund, is a joint

1 labor-management trust fund organized pursuant to the provisions
2 of Section 302(c)(9) of the Labor Management Relations Act [29
3 U.S.C. § 186(c)(9)] and Section 6(b) of the Labor Management
4 Cooperation Act of 1978 [29 U.S.C. § 175a]. Each plaintiff has a
5 fiduciary duty to the employees of the defendant employer to
6 collect funds, to invest and administer said funds, and to protect
7 said funds from claims. Plaintiffs' principal place of business
8 is in Vallejo, California.

9 5. At all times material herein, defendant Ramcon Company,
10 Inc., a California corporation (hereinafter referred to as
11 "Employer") has been an employer within the meaning of the Na-
12 tional Labor Relations Act, as amended ("NLRA") [29 U.S.C. § 151,
13 et seq.], and more particularly under Section 152(2), and within
14 the meaning of ERISA, 29 U.S.C. § 1002(5). At all times material
15 herein, Employer has been engaged in the construction industry in
16 California and, as such, has been engaged in commerce or in an
17 industry affecting commerce within the meaning of the NLRA [29
18 U.S.C. § 152(6) and (7)] and within the meaning of ERISA [29
19 U.S.C. § 1002(11) and (12)].

20 6. At all times herein mentioned, Employer was and now is,
21 a corporation duly organized and existing under and by virtue of
22 the laws of the State of California. Employer's principal place
23 of business is in San Carlos, California.

24 **STATEMENT OF FACTS**

25 7. Within four years last past and within all time periods
26 relevant herein, Employer has been signatory to a collective
27 bargaining agreement with Local Union 343 of the United Associa-
28 tion of Journey and Apprentices of the Plumbing and Pipe Fitting

1 Industry of the United States, AFL-CIO (hereinafter "Local 343")
2 and various trust agreements establishing each of plaintiff
3 trusts. By said written agreements, Employer promised that he
4 would pay fringe benefit contributions to the Trust Funds, at
5 rates set forth by the agreements, for work performed by covered
6 employees, which amounts would be paid to the Trust Funds at their
7 place of business in Vallejo, California on or before the 20th day
8 of each successive month.

9 8. Under the terms of the aforementioned agreements,
10 Employer agreed to make contributions as required by those agree-
11 ments and to be subject to and bound by all terms and conditions
12 of the various trust agreements and further promised that in the
13 event any monthly contributions were not paid when due, Employer
14 would pay ten percent (10%) of the amount of the particular
15 contributions due to each plaintiff, as and for liquidated damages
16 and not as a penalty. Employer further agreed that the liquidated
17 damages so assessed are increased, if applicable, to twenty
18 percent (20%) in the event the employer does not pay the delin-
19 quent contributions owing before a lawsuit is filed. At all times
20 herein mentioned it was, and now is, impracticable and extremely
21 difficult to fix the amount of actual damages to plaintiffs as a
22 result of the nonpayment of said contributions. The amounts
23 agreed upon herein, as hereinbefore alleged, as and for liquidated
24 damages, represented and now represents a good faith effort to
25 ascertain and compensate for the damages caused the plaintiffs by
26 the nonpayment of said contributions. The liquidated damages are
27 added to the principal sum due and unpaid as of the 20th of the
28 month following the work month and the whole thereof shall bear

1 interest at the rate of twelve percent (12%) per annum from such
2 date until paid.

3 9. The Trust Agreements authorize and obligate the trustees
4 to adopt appropriate collection procedures to enforce, by suit in
5 court or otherwise, the prompt payment of contributions to the
6 funds and to audit the books and records of any participating
7 employer to determine whether or not contributions are being made
8 in accordance with the trust agreements and the respective collec-
9 tive bargaining agreement. Employer, in adopting the master
10 agreement and the trust agreements, agreed upon request of an
11 authorized representative of the Trust Funds, to permit auditors
12 designated by the Trust Funds to review any and all records
13 relevant to the enforcement of the provisions of the collective
14 bargaining agreement and the trust agreements.

15 10. The Trust Funds have established an audit procedure that
16 involves a review of payroll records as well as a test of internal
17 controls in the employer's bookkeeping system. The audit proce-
18 dure is intended to provide the basis of an opinion, according to
19 generally accepted auditing standards, by the independent certi-
20 fied public accounting firm who perform the audits whether appro-
21 priate contributions have been made for all compensable hours.

22 11. The Trust Funds have demanded that Employer permit audit
23 entry for the period of August 1, 2006 through January 31, 2007.
24 Employer has refused to provide all of the records requested to
25 complete this audit. In the absence of such audit and review of
26 Employer's books and records as demanded, plaintiffs are not able
27 to determine whether or not Employer has fully met all of its
28 obligations to report and pay trust fund contributions for each of

1 its employees. Plaintiffs have no adequate or speedy remedy at
2 law.

3 12. Employer further agreed to pay the cost of the audit if
4 the audit shows that it owes the lesser of \$500.00 or 5% of all
5 contributions due during the period covered by the audit. In
6 addition, Employer also agreed that if it failed or refused to
7 permit audit entry as required by the aforementioned agreements,
8 Employer would be responsible for all of the costs caused by that
9 failure to provide records, even if the audit shows no money due.

10 13. It has been necessary for plaintiffs to engage counsel
11 for the purpose of enforcing Employer's obligations under the
12 aforementioned agreements. By said agreements, Employer agreed to
13 pay attorneys' fees and costs expended by the Trust Funds in
14 securing compliance, in addition to any other relief provided by
15 the court. Plaintiffs are entitled to reasonable attorneys' fees,
16 auditor's fees, and other reasonable expenses incurred in connec-
17 tion with this matter due to the failure of defendant to submit to
18 audit entry as demanded by plaintiffs.

19 14. Plaintiffs have complied with all conditions on their
20 part to be performed under the terms of the collective bargaining
21 agreement and the trust agreements.

22 WHEREFORE, plaintiffs pray judgment against Employer as
23 follows:

24 1. For an order compelling Employer to submit to audit as
25 requested and to allow the inspection of the books, records,
26 papers and reports as set out in the audit request;

27 2. For such damages by way of contribution shortages as are
28 disclosed by the audit;

3. For liquidated damages at the rate of twenty percent (20%) of the contributions shown due by the audit, plus interest on the whole sum due at the rate of twelve percent (12%) per annum from the due date until paid;

4. For damages in a sum equal to the cost of performing the audit;

5. For reasonable attorneys' fees; and

6. For cost of suit and such other further relief as the Court deems just and proper.

Dated: February 25, 2008 MCCARTHY, JOHNSON & MILLER
LAW CORPORATION

By: Lori A. Nord
LORI A. NORD
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS

Board of Trustees of the Plumbers and
Steamfitters Managed Health Care
Trust Fund, et al.

DEFENDANTS

Ramcon Company, Inc. A California
Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SOLANO
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Lori A. Nord, Esq., McCarthy, Johnson &
Miller, 595 Market St., #2200, San Francisco,
CA 94105, (415) 882-2992

ATTORNEYS (IF KNOWN)

JCS ADR

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ Removed from State Court
☐ Remanded from Appellate Court
☐ Reinstated or Reopened
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. § 185(a); 29 U.S.C. § 1132.

Action on a collective bargaining agreement for unpaid fringe benefit contributions due under contract.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

2/25/08

Lori A. Nord